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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/230,929

Applicant(s)

Kleinschmidt, J. et al.

Examiner

Yvette Connell Albert

Group Art Unit

1633



☒ Responsive to communication(s) filed on May 4, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 14-66 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 14-66 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1633

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment filed 5/4/00(Paper No. 8) has been entered. Claims 1-13 have been canceled.

Claims 14-66 have been added and are currently pending in the present application. Upon election of one of the Groups set forth in the restriction requirement set forth herein, a response to applicant's amendments and remarks filed on 5/4/00 will be prepared.

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 14-59, drawn to an adeno-associated virus vector comprising a nucleotide sequence encoding a fusion polypeptide comprising a structural papilloma polypeptide and an early papilloma polypeptide, classified in class 435, subclass 320.1.
  - II. Claims 60-66, drawn to a vaccine composition comprising adeno associated vector, and a method for activating the immune system of a subject via vaccine composition, classified in class 514, subclass 44.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the

Art Unit: 1633

product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the adeno associated virus vector can be used to deliver a desired gene for its recombinant expression in cells. The differences between the inventions are further underscored by their divergent classification and independent search status.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their divergent classification, recognized divergent subject matter, and further because the searches required for the different inventions are not coextensive, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvette Connell, whose telephone number is 703-308-7942. The examiner can normally be reached on Monday-Friday from 8:00 to 4:30 (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on 703-308-0447.

Art Unit: 1633

Any inquiry of a general nature or relating to the status of the application should be directed to the group receptionist whose telephone number is 703-308-0196. The fax number for the organization where this application or proceeding is assigned is 703-308-4242.

Yvette Connell

July 31, 2000



JOHN L. LeGUYADER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600